

Remarks

This paper is in response to the Final Official Action dated October 6, 2003, for the above-identified application. A response to the office action was originally due on January 6, 2004. Applicants are filing this response with a request for a one-month extension of time, herein attached, thus making this response due on February 6, 2003.

Claims 1-24 are pending in the application. Claims 1, 7, 9 and 11 have been amended. Claims 13, 15-19 and 21 are withdrawn from consideration (in part). Claims 1-12, 14, 20, 22 and 23 are objected to. No claims have been allowed. No new subject matter has been added to the subject application with the filing of this response.

In view of the following remarks, applicants believe that the pending claims are in condition for allowance and consequently request such action.

PTO-1449 Forms for Information Disclosure Statements submitted on February 28, 2003 and June 19, 2003.

As an initial matter, applicants respectfully request the Examiner to initial and return a copy of the PTO-1449 Form for the IDS submitted to the PTO on February 28, 2002 and marked Received by Tech Center 1600/2900, March 14, 2002.

Further, applicants respectfully request the Examiner to initial and return a copy of the PTO-1449 Form for the Supplemental IDS submitted to the PTO on June 19, 2003.

As applicants previously stated in the June 19, 2003 response, some of the references therein listed on the February, 28, 2002 IDS contained the incorrect publication numbers. Applicants filed a Supplemental Information Disclosure Statement for the Examiner to initial and return to the applicants. The Supplemental IDS PTO-1449 form also lists those references previously cited and incorrectly identified in the February 28, 2002 IDS.

Examiner's Comments Regarding Restriction

The Examiner stated the scope of the invention has been modified from that described in the March 19, 2003 Office Action (see below). The Examiner stated

that as a result of the election and the corresponding compounds identified in the office action, the non-elected subject matter of claims 1-11, 12, 14, 20, 22 and 23 (in part) were withdrawn from further consideration as being drawn to non-elected inventions, i.e., those compounds containing diazine, morpholine, thiazine groups, etc. The Examiner stated that the restriction was repeated and made Final.

In the March 19, 2003 Office Action, the Examiner stated that claims 13, 15-19 and 21 (in part), drawn to methods of use of compounds of formula depicted in claim would be allowable along with the elected invention and commensurate in scope. Presently, the Examiner has stated that these claims have now been withdrawn, without clarifying the fact that these claims would be allowable if commensurate in scope with the compounds of claim 1. Applicants respectfully ask the Examiner to confirm his previous allowance of claims 13, 15-19 and 21.

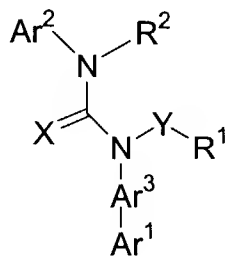
Applicants' Response to Examiner's Objections

The Examiner stated that Claims 1-24 remain objected to in this application.

As an initial matter, Applicants wish to thank the Examiner for taking the applicants comments into consideration and agreeing to modify the scope of the elected the invention from that described in the March 19, 2003 Office Action.

The Examiner stated that, the generic concept of the elected subject matter is as follows:

the compound of the formula depicted in claim 1,



wherein

X is **O**;

Y is a single bond or (C₁-C₃) alkylene;

R¹ is optionally substituted pyrrolidine or piperidine;

R² is H or (C₁-C₆)alkyl;

R^3 is defined as independently H, or non-substituted or halo substituted $-(C_1-C_6)alkyl$, $-(C_3-C_7)cycloalkyl$, $-(C_1-C_6)alkoxy$, $-(C_3-C_7)cycloalkyl-(C_1-C_6)alkyl$, $-(C_1-C_6)alkoxy-(C_1-C_6)alkylene$, aryl or aralkyl;

R^4 is as defined;

R^5 is defined as independently H, or non-substituted or halo substituted $-(C_1-C_6)alkyl$, $-(C_3-C_7)cycloalkyl$, $-(C_1-C_6)alkoxy$, $-(C_3-C_7)cycloalkyl-(C_1-C_6)alkyl$, $-(C_1-C_6)alkoxy-(C_1-C_6)alkylene$, aryl or aralkyl;

Ar^1 is aryl group having a cyano group as a substituent;

Ar^2 is aryl group;

and

Ar^3 is an aryl group.

The Examiner objected to claims 1-11, 12, 15, 20, 22 and 23 for containing non-elected subject matter (see above). The Examiner stated these claims, as well as claims 13, 15-19 and 21 were drawn solely to the elected invention as identified, *supra*.

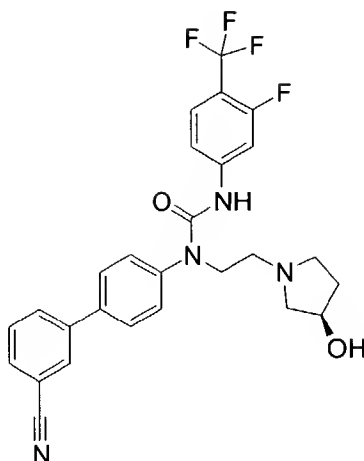
In response, applicants **agree in part and traverse in part** to the Examiner's suggested generic concept of the claimed invention.

Applicants agree with the Examiner's suggested definition of X, R^1 , R^2 and R^4 . For the purposes of furthering the prosecution of this application, applicants agree with the Examiner's suggestion to limit R^1 to 5 and 6-membered rings containing a single nitrogen. However, applicants respectfully wish to modify the Examiner's last definition of the claimed invention with respect to Y, R^3 , R^4 , Ar^1 , Ar^2 and Ar^3 .

Definition of Ar^2 and Ar^3

Previously, an oversight occurred when claim 1 was amended by deleting language that allowed the substitution of Ar^2 and Ar^3 .

This oversight is problematic for the following reason. The applicants' elected species (below) has substituents on Ar^2 . Thus, the scope of claim 1 must be consistent with the elected species claimed by the applicants and subsequently searched for by the Examiner.



In an effort to advance the prosecution of this case and to ensure that this oversight is addressed, applicants have amended claim 1. Applicants respectfully suggest that this amendment is necessary at this stage of the prosecution in order to reconcile the elected species that was used in the Examiner's art search with the scope of the claimed invention. With regard to Ar³, applicants feel that it would not unduly burdensome for the Examiner to search a substituted Ar³ group. Applicants respectfully suggest that since a search has been done where Ar¹ is substituted on Ar³, it would not be unduly burdensome to search compounds where Ar³ is substituted with the limited number of groups that applicants have claimed in claim 1. Applicants respectfully suggest that with this amendment, they have addressed this oversight in a manner that will expedite the allowance of this case.

Definition of Y

As previously stated in their last response, applicants essentially agree with the Examiner's suggested definition of Y. However, applicants feel that Y can be a one to four carbon alkylene, as originally claimed in claim 1. Applicants respectfully maintain that Y should not be limited to a three-carbon alkylene as suggested by the Examiner. Applicants respectfully note that the Examiner has asked for the withdrawal of compounds containing diazine, morpholine, thiazine, (with regard to the definition of R¹), etc. However, the Examiner has not stated a reason as to why Y is being limited to a one to three carbon alkylene.

Definition of R³ and R⁴

Applicants note that the Examiner has limited the definitions for R³ and R⁴ so that both groups no longer claim heteroaralkyl. The Examiner had previously allowed both groups to be defined as heteroaralkyls. Applicants respectfully

suggest that the Examiner allow applicants to claim R^3 and R^4 as heteroaralkyls as applicants suggest that if it was not a burden to conduct a search where R^3 and R^4 can be heteroaralkyls previously, it should not be burdensome now. Applicants respectfully note that the Examiner has asked for the withdrawal of compounds containing diazine, morpholine, thiazine, (with regard to the definition of R^1), etc. However the Examiner has not stated why at this late stage of the prosecution, the Final Office Action, the definitions of R^3 and R^4 have to be modified to exclude heteroaralkyls when they were previously acceptable in the last office action.

Definition of Ar^1

Applicants maintain that there would not be an undue burden to search for substituents other than $-CN$ on Ar^1 . Applicants make such a suggestion in light of the numerous restrictions that the Examiner has already placed on the applicants and that applicants have agreed to in limiting the present scope of the claims. Applicants respect the Examiner's need to define the scope of the invention in order to do a proper search. However, applicants respectfully note that the Examiner has asked for the withdrawal of compounds containing diazine, morpholine, thiazine, (with regard to the definition of R^1), etc. However, the Examiner has not enunciated a reason as to why Ar^1 is being limited to be substituted solely to $-CN$. Applicants respectfully suggest that it is not unreasonable to allow the substitution of an aromatic ring with other types of substituents. Applicants respectfully suggest that substitution of an aromatic group with the limited number of substituents claimed by the applicants, is routine. Applicants also note that the Examiner has **not** cited any art or that would preclude applicants from claiming a broader list of substitutions at Ar^1 . Therefore, for the reasons stated above, applicants respectfully suggest that searching groups other than $-CN$ is routine and would not present an undue burden to the Examiner.

Applicants have amended claims 1 and 11 to claim a group of compounds that are representative of the applicants' elected species. As requested by the Examiner, applicants have amended claim 1 to state that R^1 is an optionally substituted and saturated 5 or 6-membered ring where said ring contains one nitrogen. Claims 7, 9 and 11 have been amended so that they are now commensurate in scope with claim 1.

Applicants respectfully submit that in view of the above amendment, applicants have sufficiently address the Examiner's objection and that the application, as pending, is in condition for allowance and courteously solicit a Notice of Allowance.

If fees are determined to be due by this paper, the Commissioner is hereby authorized to deduct such fees from **Account No. 19-0365**.

The Examiner is requested to call the undersigned attorney on any matter connected with this application.

Respectfully submitted,



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WILLIAM Y. LEE
(REGISTERED REPRESENTATIVE)

 2/6/2004
(SIGNATURE AND DATE)